

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Tapabrata Chakraborty
&
The Hon'ble Justice Partha Sarathi Chatterjee

FMA 2046 of 2018

The Board of Governors, Ghani Khan Choudhury
Institute of Engineering & Technology & Ors.
Versus
Deb Halder & Ors.

<i>For the Appellants</i>	:	<i>Mr. Md. Sarwar Jahan,</i> <i>Ms. Mousumi Mitra,</i> <i>Mr. Gourav Das,</i> <i>Ms. Tapati Sarkar,</i> <i>Mr. Asif Mehedi,</i> <i>Ms. Shalini Sen,</i> <i>Ms. Sahina Parvin,</i> <i>Mr. Soumyajit Roy Choudhury.</i>
<i>For the Writ Petitioner/ Respondent no.1</i>	:	<i>Mr. Kallol Basu,</i> <i>Mr. Swapnamoy Sarkar.</i>
<i>For the UGC</i>	:	<i>Mr. Anil Kr. Gupta.</i>
<i>Hearing is concluded on</i>	:	<i>15th January, 2026.</i>
Judgment On	:	28th January, 2026.

Tapabrata Chakraborty, J.

1. In the present appeal the Board of Governors (in short, BoG) and two other functionaries of the Ghani Khan Choudhury Institute of Engineering & Technology) (in short, the Institute) have challenged an order dated 3rd September, 2018 passed by the learned single Judge in a writ petition being WP 31413 (W) of 2017 setting aside an order of termination dated 08/10.11.2017 by which the probationary service of the said Institute's Superintendent, namely Deb Halder (in short, Deb) was set aside. The order impugned would reveal that on behalf of the said Institute two arguments were advanced. The first was that probationary service gives right to the employer to assess competence, efficiency and suitability of probationer to be appointed to the post and Deb had suppressed an information about a police case against him at the time of his application for the post. The second was that Deb was also involved in a police case dated 05.09.2015 which created unrest in the said Institute and considering an enquiry report of a Fact-Finding Committee, the Governing Body rightly adopted the resolution to terminate Deb. The learned single Judge discounted both the arguments observing that *'so far as the first allegation is concerned, pre-requisite of PVR appears to have been in favour of the petitioner since disclosure was made of pending case. To find unsuitability on a police case subsequent to PVR for to be relied upon as a pre-requisite of PVR not met and that too without giving opportunity to petitioner to explain, is something that does not appeal to this Court. A pre-requisite cannot relate to a subsequent event'*. The learned single Judge also observed that the reason for terminating Deb's probationary service based on his competence, efficiency

was '*conspicuously absent from the contents of the impugned office order*' and that in such circumstances question whether Deb stood automatically confirmed is not required to be gone into in adjudicating challenge to the impugned order.

2. Record reveals that in the application for stay filed in connection with the appeal, an order was passed by a coordinate Bench of this Court on 24th June, 2019 staying the operation of the order impugned and direction was issued for filing of paper books.

3. Mr. Jahan learned advocate appearing for the appellants argues that ordinarily a deemed confirmation of a probationer arises when the letter of appointment so stipulates or the Rules governing service condition so indicate. Such term is absent in the letter of appointment as well as in the consolidated instructions of probation/confirmation in central services governing the said Institute, as contained in the memo dated 21.07.2014. In view thereof, the observation of the learned single Judge that police case subsequent to PVR could not have been relied upon is not sustainable in law. In support of such contention reliance has been placed upon the judgment delivered in the case of *High Court of Madhya Pradesh through Registrar & Ors. versus Satya Narayan Jhavar*, reported in (2001) 7 SCC 161 overruling the judgment delivered in the case of *Dayaram Dayal versus State of M.P. & Anr.*, reported in (1997) 7 SCC 443.

4. He contends that in a case where the employee has disclosed involvement in a criminal case, even acquittal in the same would not automatically entitle a candidate for appointment to a post and it would still

be open to the employer to consider the antecedents and examine whether the candidate concerned is suitable and fit for appointment. In support of such contention reliance has been placed upon the judgment delivered in the case of *Satish Chandra Yadav versus Union of India & Ors.*, reported in (2023) 7 SCC 536.

5. Drawing our attention to the enquiry report of the Fact-Finding Committee, Mr. Jahan contends that the impugned order was passed being oblivious of Deb's unauthorized absence though the Committee arrived at such finding as regards unauthorized absence upon considering the response of Deb to such allegation through letters dated 14.09.2017, 15 (18).09.2017 along with 77 enclosures. Such argument, as urged, was glossed over by the learned single Judge and no finding was returned on the same. Such infirmity warrants interference in the present appeal.

6. He argues that the learned single Judge granted no weightage whatsoever to Deb's clear nexus with the tender process pertaining to manpower requirement involving estimated financial involvement of Rs. 2,87,42,674.28p. The employer has been conferred the jurisdiction to exercise discretion and to consider as to whether the probationer's work was satisfactory. In view thereof, the decision of termination does not suffer from any jurisdictional error. The suitability perception varies from person to person and according to the competent authority, Deb was unsuitable for the post and such decision does not cast any aspersion upon him warranting interference of this Court in exercise of its discretionary jurisdiction.

7. Mr. Jahan submits that in the offer of appointment contained in the memo dated 09.11.2013 it was specifically stated that Deb's appointment is provisional and shall be on probation for a period of two years. It was also stated that such appointment may be terminated at any time on one month's notice given by other side and that if any information given and declaration furnished by the Deb is proved to be false or it transpires that he willfully suppressed material information, he would be liable for termination. As there was no regular Director in the said Institute, Deb continued after two years and prior to completion of two years thereafter the termination order was issued. Deb had no right to the post and was liable to be discharged at any time during the period of probation. The decision towards denial of extension of the probationary period is neither stigmatic nor punitive in nature warranting interference.

8. Mr. Basu, learned advocate appearing for Deb submits that in the attestation form Deb had disclosed in answer to questions 1 and 10 that Malda Police Station Case No. 173/2009 dated 04.18.2009 u/s 341/323/427/506 I.P.C. is pending against him and that in connection with the same he was arrested on 04.08.09 and he obtained bail on the same day. In view thereof, the observation in the impugned office order that Deb had suppressed information about a police case pending against him at the time of his application for the post of Superintendent in the said Institute had been rightly discounted by the learned single Judge moreso when the nature of the offence alleged cannot by any stretch of imagination be construed to be a serious crime. Reliance has been placed upon a judgment

delivered by a co-ordinate Bench in the case of *Partha Biswas versus Union of India and Others*, reported in 2024 SCC Online Cal 1457.

9. Mr. Basu contends that the allegation of unauthorized absence in the impugned office order for the period from 16.02.2017 to 04.08.2017 is also unfounded inasmuch as in the midst thereof he was given the charge of Assistant Registrar in addition to his own duties, as would be explicit from the memo dated 24.05.2017 issued by the Professor-in-Charge of the said Institute. A finding of unauthorised absence also could not have been arrived at without affording an opportunity of hearing to the delinquent to make his version clear to the authority upon offering explanation in his defence moreso when unauthorised absence does not *ipso facto* equate to wilful unauthorised absence and requires a positive finding of intent.

10. He further submits that the tender process referred to in the report of the Fact-Finding Committee alleging financial involvement of an amount of Rs. 2,87,42,674.28p. could not have been cited as a ground towards formation of an opinion against Deb since the said tender was scrapped in the month of September, 2017. Such fact could not be disputed by the said Institute. The finding in the impugned order is thus absolutely perverse and Deb is entitled to reinstatement and back wages since he had been penalised without arriving at any finding as regards his purported guilt. The decision towards termination is thus stigmatic and punitive in nature warranting interference of this Court. It is a well-known principle of administrative law that when relevant considerations have not been taken note of and irrelevant aspects have been eschewed from consideration, such

decision can be attacked on merits as the process in reaching decision has not been observed correctly. The allegations against Deb were the foundation and not mere motive and as no enquiry was held, the termination was bad. Reliance has been placed upon judgments delivered by the Supreme Court in the cases of *Jagdish Mitter versus Union of India and Others*, reported in AIR 1964 SC 449 and *Dipti Prakash Banerjee versus Satyendra Nath Bose National Centre For Basic Sciences, Calcutta and Others*, reported in (1999) 3 SCC 60.

11. Drawing our attention to the guidelines contained in the memo dated 21.07.2014, Mr. Basu argues that the clauses, as incorporated in the said memo, need to be considered together and not in isolation. A particular clause cannot be taken up and highlighted. A probationer, who is not making satisfactory progress, should be informed of his shortcomings. Whether an employee should be confirmed or his probation should be extended needs to be communicated soon after the expiry of the initial probationary period, however, in the present case the decision to terminate was taken about 18 months after the expiry of the first period of two years of service. In view thereof, the judgments delivered in the cases of *High Court of Madhya Pradesh (Supra)* and *Satish Chandra Yadav (Supra)* are distinguishable on facts.

12. The crucial question is as to whether the termination can be termed as an innocuous termination simpliciter or it is an order of punishment based on the alleged misconduct of Deb.

13. There is no dispute as regards the proposition of law that the termination of services of a probationer under the rules of his employment is neither *per se* dismissal nor removal. However, if the order visits the employee with evil consequences or casts aspersions against his character or integrity, it would be an order by way of punishment and the Court can certainly interfere. Going by the tenor of the impugned order of termination, it is incomprehensible as to how the same can be construed as termination simpliciter. The form and language of the impugned order of termination clearly indicates that it is punitive in nature. In the said order it has categorically been stated that Deb was absent unauthorizedly and was involved in doing a tender without proper authorization and that the contract work order of value of Rs. 2.73 crore was issued. The allegations are unfounded as in the midst of the period of alleged unauthorized absence Deb was given additional duties and the tender referred to was scrapped. The desirability towards issuance of the termination order was based on allegation of misconduct and as such the impugned order of termination cannot be construed to be an order of simple discharge.

14. Records would further reveal that Deb was offered appointment to the post of Superintendent in the said Institute by a memo dated 9.11.2013 and he joined the said post on 13.11.2013. From the date of such appointment till 07.08.2017 there was no regular Director in the said Institute and the Director of National Institute of Technology (NIT Durgapur) was the Director of the said Institute. In the absence of a regular Director, an Officer on Special Duty was appointed during the period from 26.04.2012

till 25.04.2015. During such engagement, Deb was assigned responsibilities in addition to his regular duties. In course of such service serious irregularities came to his notice and as per the instruction of the Mentor Director, he submitted a report dated 12.07.2017 detailing the irregularities perpetrated in the said Institute and specifying the names of the Assistant Professors recruited without requisite qualification. One of the said Assistant Professors was Bikarna Tarafdar. In the said report it was also revealed that though many candidates applied for the post of Assistant Registrar but only three applicants including one Md. Abdur Rajjaque were called for interview. Among them, two had no working experience and that as such it was found that the appointment of Md. Abdur Rajjaque as Assistant Registrar was in question. The said report was forwarded to the Ministry of Human Resources Development (MHRD) and as an after-effect Deb was not allowed earned leave and was heckled and harassed by the authorities of the said Institute and he was suddenly terminated on 08/10.11.2017. Bikarna Tarafdar and Md. Abdur Rajjaque were members of the Fact-Finding Committee and on the basis of the report of the said Committee, the order of termination was issued. Such circumstances preceding and attendant on the order of termination of service visits the public servant on probation with evil consequences and it cannot be ruled out that the said order was issued by way of punishment.

15. It is well known that a decision is an authority for what it decides and not what can logically be deduced therefrom. Even a slight distinction in fact or an additional fact may make a lot of difference in decision making

process. The judgment is a precedent for the issue of law that is raised and decided and not observations made in the facts of any particular case. There is no dispute with the proposition of law laid down in the judgments cited by Mr. Jahan but the same are distinguishable on facts.

16. For the reasons discussed above, we do not find any infirmity in the order impugned. The learned single Judge upon dealing with the factual issues arrived at specific findings and we do not find any error in the same warranting interference in appeal.

17. Accordingly, the appeal and the connected application, if any, are dismissed.

18. There shall, however, be no order as to costs.

19. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties, upon compliance of all requisite formalities.

(Partha Sarathi Chatterjee, J.)

(Tapabrata Chakraborty, J.)

LATER

After delivery of the judgment, Mr. Jahan, learned advocate appearing for the appellants prays for stay of operation of the judgment.

Such prayer is considered and rejected.

(Partha Sarathi Chatterjee, J.)

(Tapabrata Chakraborty, J.)